



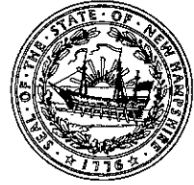
State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

603-271-2900

FAX 603-271-2456

TDD Access: Relay NH 1-800-735-2964



June 12, 2003

Brenda E. Keith
Boutin Associates
PO Box 1107
Londonderry, NH 03053

Re: Docket No. 03-05 WMC – Town of Bethlehem, NH Appeal

Dear Attorney Keith:

Enclosed you will find the NH Waste Management Council's Decision & Order relative to the *Partial Assented-To Motion to Continue [Stay]*, which you filed with my office on May 6, 2003.

If you have any questions please contact me at (603) 271-6072, or by email at msclafani@des.state.nh.us

Sincerely,
COPY

Michael Sclafani, Appeals Clerk
NH Waste Management Council

cc: G. Bradley Richards, Chairman, NH Waste Management Council
Philip J. O'Brien, Ph.D., Director, DES Waste Management Division
Brian K. Gould, Esq.
Maureen D. Smith, NH DOJ
Mark R. Harbaugh, DES Legal Unit
Michael Guilfooy, DES WMD
Richard Reed, DES WMD



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

603-271-2900 FAX 603-271-2456

TDD Access: Relay NH 1-800-735-2964



STATE OF NEW HAMPSHIRE
WASTE MANAGEMENT COUNCIL

Decision & Order

Partial Assented-To Motion To Continue (Stay)

Docket No. 03-05 WMC

Appeal of Town of Bethlehem, NH
In re: Permit No. DES-SW-SP-03-002

Background

On April 14, 2003, Attorney Brenda E. Keith filed a Petition for Appeal of DES Permit No. DES-SW-SP-03-002 on behalf of the Town of Bethlehem, NH ("the Appellant") with the NH Waste Management Council ("the Council").

On April 21, 2003 Attorney Maureen D. Smith filed an Appearance with the Council on behalf of the Department of Environmental Services, Waste Management Division ("DES").

On April 21, 2003 Attorney Brian K. Gould filed an Assented-To Motion to Intervene with the Council on behalf of North Country Environmental Services ("NCES").

On April 24, 2003 the Council voted to accept the Appellants petition for appeal, and to grant NECS' Assented-To Motion to Intervene.

An appeal hearing was scheduled for May 22, 2003 at 11:00am and the parties to the appeal were notified by written hearing notice.

Discussion

On May 6, 2003, Attorney Brenda E. Keith filed a Partial Assented-To Motion to Continue on behalf of the Appellant. In her filing, Attorney Keith informed the Council that on April 25, 2003, the Grafton County Superior Court issued an order ("the order") relative to Grafton County Superior Court Docket No. 01-E-0177 (NCES v. Town of Bethlehem), and that on information and belief NCES is expected to appeal the order to the NH Supreme Court. Attorney Keith argued that the order, if upheld, may render moot the Stage IV permit which is the subject of this appeal before the Council. Attorney Keith requested that the Council continue the appeal proceedings until which time the appeal of the Grafton Superior Court's Order is taken and decided by the New Hampshire Supreme Court.

On May 12, 2003 Attorney Gould filed an Objection to the May 6, 2003 Assented-To Motion to Continue. In his filing, Attorney Gould argued that if appealed, the issued on appeal from the order will be entirely different than those before the Council. Attorney Gould further argued that if the Council were to grant the motion and if NCES were to prevail before the Supreme Court, NCES would be prejudiced as a result of the continuance by the Council.

On May 22, 2003, prior to commencement of the scheduled appeal hearing in this matter, the Council convened a motions hearing to allow all parties to the appeal an opportunity to argue their respective positions relative to the May 6, 2003 Partial Assented-To Motion to Continue. Present that the hearing were Attorneys Keith, Smith, and Gould. All parties were given an unlimited amount of time to argue their position(s). Members of the Council posed various questions to each of the parties. All parties were given an unlimited amount of time to answer Council questions. All parties agree that the May 6, 2003 Partial Assented-To Motion to Continue filed by Attorney Keith was more appropriately titles a Motion for Stay.

Conclusion

After considering arguments by all parties the Council concluded that if granted, this motion could place an unreasonable burden on NCES in which case it would be biased towards the Appellant. The Council further concluded that issues that may be raised by NCES in an appeal of the order to the NH Supreme Court would be different from issues before the Council as filed by the Appellant.

Order

Based on the reasons outlined above, the May 6, 2003 Motion to Continue is **DENIED**.

So Ordered for the Council by:


Michael Schifano, Appeals Clerk

Dated June 12, 2003